

AMENDED IN SENATE APRIL 20, 2009

SENATE BILL

No. 639

Introduced by Senator Calderon

February 27, 2009

An act to ~~amend Section 25612.5 of~~ *add Section 25503.56 to the Business and Professions Code, relating to alcoholic beverages.*

LEGISLATIVE COUNSEL'S DIGEST

SB 639, as amended, Calderon. Alcoholic beverage licensees: ~~retail operating procedures.~~ *tasting permits.*

The Alcoholic Beverage Control Act contains various provisions regulating the application for, the issuance of, the suspension of, and the conditions imposed upon, alcoholic beverage licenses by the Department of Alcoholic Beverage Control. Existing law provides for various annual fees for the issuance of alcoholic beverage licenses depending upon the type of license issued.

This bill would add a tasting permit to the Alcoholic Beverage Control Act, which would allow the permitholder to designate a portion of the existing licensed premises for the purposes of instructing consumers on the subject of the alcoholic beverage products the licensee is licensed to sell, as specified. The bill would impose an annual fee for a tasting permit of \$250, which would be deposited in the Alcohol Beverage Control Fund and would be used only for the purposes of administering these provisions.

The Alcoholic Beverage Control Act provides that a violation of its provisions is a misdemeanor, unless otherwise specified.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state.

Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

~~Existing law establishes certain general operating standards that are applicable, as provided, to the licensed premises of certain retailers of alcoholic beverages, the violation of which is punishable as a misdemeanor.~~

~~This bill would impose a state-mandated local program by requiring that, when feasible, the illumination required on the specified retail licensed premises be energy efficient, the violation of which would be a misdemeanor.~~

~~The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.~~

~~This bill would provide that no reimbursement is required by this act for a specified reason.~~

Vote: majority. Appropriation: no. Fiscal committee: yes.
State-mandated local program: yes.

The people of the State of California do enact as follows:

- 1 SECTION 1. Section 25503.56 is added to the Business and
- 2 Professions Code, to read:
- 3 25503.56. (a) Notwithstanding any other provision of this
- 4 division, the department may issue a tasting permit to an off-sale
- 5 general licensee. The tasting permit shall authorize the off-sale
- 6 general licensee to designate a portion of the existing licensed
- 7 premises for the purposes of instructing consumers on the subject
- 8 of the alcoholic beverage products that the licensee is licensed to
- 9 sell. The designation of the tasting area shall be made by the
- 10 applicant in the application, and instruction under the permit shall
- 11 be conducted only in the designated area. The instruction may
- 12 include, without limitation, the history, nature, values, and
- 13 characteristics of the alcoholic beverage product and the methods
- 14 of presenting and serving the product. The tastings shall be limited
- 15 as follows:
- 16 (1) A single tasting of distilled spirits shall not exceed
- 17 three-fourths of one ounce per person, per day.

1 (2) A single tasting of wine shall not exceed three ounces per
2 person, per day.

3 (3) A single tasting of beer shall not exceed six ounces per
4 person, per day.

5 (b) The tasting permit shall not authorize the off-sale general
6 licensee to conduct any on-sale retail sales to consumers, and no
7 charge of any sort shall be made for the tastings.

8 (c) (1) The department shall enforce all applicable laws and
9 regulations with regard to tastings to ensure that the tastings are
10 appropriately controlled and that access to the tastings area by
11 persons under the legal drinking age is strictly prohibited.

12 (2) Within the tasting area, the permitholder shall display a
13 sign prohibiting the presence of persons under the legal drinking
14 age. The permitholder shall verify that any person who enters the
15 tasting area is at least the legal drinking age, and shall not allow
16 a consumer attending a tasting to leave the tasting area with an
17 alcoholic beverage product.

18 (d) An applicant for a tasting permit under this section shall,
19 at the time of filing the application for the permit, accompany the
20 application with a fee of one two hundred fifty dollars (\$250). The
21 annual renewal fee for a permit issued pursuant to this section
22 shall be two hundred fifty dollars (\$250). Fees collected pursuant
23 to this section shall be deposited in the Alcohol Beverage Control
24 Fund, but shall be used only for the purposes of administering this
25 section.

26 (e) (1) Notwithstanding any other provision of this division, a
27 distilled spirits manufacturer, distilled spirits manufacturer's
28 agent, winegrower, winegrower's agent, beer manufacturer,
29 rectifier, distilled spirits general importer, beer and wine general
30 importer, distilled spirits wholesaler, beer and wine wholesaler,
31 or any representative of those licensees, may instruct consumers
32 at the tastings area of permitholder that is otherwise authorized
33 to sell its product, with the permission of the permittee, including,
34 without limitation, selecting the brands featured at the instruction
35 and the pouring of tastings for consumers.

36 (2) Notwithstanding any other provision of this division, a
37 distilled spirits manufacturer, distilled spirits manufacturer's
38 agent, winegrower, winegrower's agent, beer manufacturer,
39 rectifier, distilled spirits general importer, beer and wine general
40 importer, distilled spirits wholesaler, beer and wine wholesaler,

1 or any representative of those licensees, may provide alcoholic
2 beverages necessary to conduct an instruction authorized under
3 this section, and, in such an event, shall remove any unfinished
4 and unopened containers of alcoholic beverages following the
5 tasting. The distilled spirits manufacturer, distilled spirits
6 manufacturer's agent, winegrower, winegrower's agent, beer
7 manufacturer, rectifier, distilled spirits general importer, beer and
8 wine general importer, distilled spirits wholesaler, beer and wine
9 wholesaler, or any representative of those licensees, may purchase
10 alcoholic beverages used in the instruction from the retail off-sale
11 licensee, provided the payment does not exceed the retail price of
12 the alcoholic beverages.

13 (3) Notwithstanding any other provision of this division, a
14 distilled spirits manufacturer, distilled spirits manufacturer's
15 agent, winegrower, winegrower's agent, beer manufacturer,
16 rectifier, distilled spirits general importer, beer and wine general
17 importer, or any representative of those licensees, in advance of
18 an instruction being held at a retailer's premises, may list in an
19 advertisement the name, address, and Internet Web site of the
20 off-sale retailer, the names of the alcoholic beverage brands being
21 featured at the instruction, and the time, date, and location of, and
22 other information about, the tasting, provided that both of the
23 following apply:

24 (A) The advertisement does not contain the retail price of the
25 alcoholic beverages.

26 (B) The listing of the retailer's name, address, and Internet Web
27 site is the only reference to the retailer in the advertisement, and
28 is relatively inconspicuous in relation to the advertisement as a
29 whole.

30 (4) Notwithstanding its holding of any other license under this
31 division, a distilled spirits wholesaler or a beer and wine
32 wholesaler shall not be authorized under this subdivision to publish
33 any advertisement, nor be required to reimburse any permitholder
34 under this section, for the costs of its advertisement.

35 (f) For purposes of this section, a licensed distilled spirits
36 wholesaler or beer and wine wholesaler shall not be a
37 representative of a distilled spirits manufacturer, distilled spirits
38 manufacturer's agent, winegrower, winegrower's agent, beer
39 manufacturer, rectifier, distilled spirits general importer, or beer
40 and wine general importer.

SEC. 2. No reimbursement is required by this act pursuant to Section 6 of Article XIII B of the California Constitution because the only costs that may be incurred by a local agency or school district will be incurred because this act creates a new crime or infraction, eliminates a crime or infraction, or changes the penalty for a crime or infraction, within the meaning of Section 17556 of the Government Code, or changes the definition of a crime within the meaning of Section 6 of Article XIII B of the California Constitution.

SECTION 1. Section 25612.5 of the Business and Professions Code is amended to read:

25612.5. (a) ~~This section shall apply to licensees other than a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16; a winegrowers license; a licensed beer manufacturer, as defined in Section 23357; a retail licensee who concurrently holds an off-sale retail beer and wine license and a beer manufacturer's license for those same or contiguous premises; and a retail on-sale licensee or on-sale beer and wine licensee who is licensed and operates as a bona fide public eating place, as defined in Section 23038, 23038.1, or 23038.2, or as a hotel, motel, or similar lodging establishment, as defined in subdivision (b) of Section 25503.16, a licensed beer manufacturer, as defined in Section 23357, or a winegrowers license, who sells off-sale beer and wine under the on-sale license on those same or contiguous premises.~~

(b) ~~The Legislature finds and declares that it is in the interest of the public health, safety, and welfare to adopt operating standards as set forth in this section for specified retail premises licensed by the department. The standards set forth in this section are state standards that do not preclude the adoption and implementation of more stringent local regulations that are otherwise authorized by law.~~

(c) ~~Other than as provided in subdivision (a), each retail licensee shall comply with all of the following:~~

(1) ~~A prominent, permanent sign or signs stating "NO LOITERING IS ALLOWED ON OR IN FRONT OF THESE PREMISES" shall be posted in a place that is clearly visible to~~

1 patrons of the licensee. The size, format, form, placement, and
2 languages of the sign or signs shall be determined by the
3 department. This paragraph shall apply to a licensee only upon
4 written notice to the licensee from the department. The department
5 shall issue this written notice only upon a request, from the local
6 law enforcement agency in whose jurisdiction the premises are
7 located, that is supported by substantial evidence that there is
8 loitering adjacent to the premises.

9 (2) A prominent, permanent sign or signs stating “NO OPEN
10 ALCOHOLIC BEVERAGE CONTAINERS ARE ALLOWED
11 ON THESE PREMISES” shall be posted in a place that is clearly
12 visible to patrons of the licensee. The size, format, form, placement,
13 and languages of the sign or signs shall be determined by the
14 department. This paragraph shall apply to a licensee only upon
15 written notice to the licensee from the department. The department
16 shall issue this written notice only upon a request, from the local
17 law enforcement agency in whose jurisdiction the premises are
18 located, that is supported by substantial evidence that there is
19 drinking in public adjacent to the premises.

20 (3) No alcoholic beverages shall be consumed on the premises
21 of an off-sale retail establishment, and no alcoholic beverages shall
22 be consumed outside the edifice of an on-sale retail establishment.

23 (4) The exterior of the premises, including adjacent public
24 sidewalks and all parking lots under the control of the licensee,
25 shall be illuminated during all hours of darkness during which the
26 premises are open for business in a manner so that persons standing
27 in those areas at night are identifiable by law enforcement
28 personnel. However, the required illumination shall be placed so
29 as to minimize interference with the quiet enjoyment of nearby
30 residents of their property. When feasible, the illumination shall
31 be energy efficient.

32 (5) Litter shall be removed daily from the premises, including
33 adjacent public sidewalks and all parking lots under the control of
34 the licensee. These areas shall be swept or cleaned, either
35 mechanically or manually, on a weekly basis to control debris.

36 (6) Graffiti shall be removed from the premises and all parking
37 lots under the control of the licensee within 72 hours of application.
38 If the graffiti occurs on a Friday or weekend day, or on a holiday,
39 the licensee shall remove the graffiti 72 hours following the
40 beginning of the next weekday.

1 ~~(7) No more than 33 percent of the square footage of the~~
2 ~~windows and clear doors of an off-sale premises shall bear~~
3 ~~advertising or signs of any sort, and all advertising and signage~~
4 ~~shall be placed and maintained in a manner that ensures that law~~
5 ~~enforcement personnel have a clear and unobstructed view of the~~
6 ~~interior of the premises, including the area in which the cash~~
7 ~~registers are maintained, from the exterior public sidewalk or~~
8 ~~entrance to the premises. However, this latter requirement shall~~
9 ~~not apply to premises where there are no windows, or where~~
10 ~~existing windows are located at a height that precludes a view of~~
11 ~~the interior of the premises to a person standing outside the~~
12 ~~premises.~~

13 ~~(8) Upon request of the local law enforcement agency in whose~~
14 ~~jurisdiction the licensed premises are located or at the discretion~~
15 ~~of the department, each public telephone located on off-sale~~
16 ~~premises (or located in an adjacent area under the control of the~~
17 ~~off-sale licensee) shall be equipped with devices or mechanisms~~
18 ~~that prevent persons from calling into that public telephone.~~

19 ~~(9) Every licensed retailer who sells or rents video recordings~~
20 ~~of harmful matter, as defined by Section 313 of the Penal Code,~~
21 ~~shall create an area within his or her business establishment for~~
22 ~~the placement of video recordings of harmful matter and for any~~
23 ~~material that advertises the sale or rental of these video recordings.~~
24 ~~This area shall be labeled “adults only.” The licensed retailer shall~~
25 ~~make reasonable efforts to arrange the video recordings in this~~
26 ~~area in such a way that minors may not readily access the video~~
27 ~~recordings or view the video box covers. The failure to create and~~
28 ~~label the “adults only” area is an infraction punishable by a fine~~
29 ~~of not more than one hundred dollars (\$100). The failure to place~~
30 ~~a video recording or advertisement, regardless of its content, in~~
31 ~~this area shall not constitute an infraction.~~

32 ~~(10) A copy of the applicable operating standards shall be~~
33 ~~available during normal business hours for viewing by the general~~
34 ~~public.~~

35 ~~SEC. 2. No reimbursement is required by this act pursuant to~~
36 ~~Section 6 of Article XIII B of the California Constitution because~~
37 ~~the only costs that may be incurred by a local agency or school~~
38 ~~district will be incurred because this act creates a new crime or~~
39 ~~infraction, eliminates a crime or infraction, or changes the penalty~~
40 ~~for a crime or infraction, within the meaning of Section 17556 of~~

- 1 ~~the Government Code, or changes the definition of a crime within~~
- 2 ~~the meaning of Section 6 of Article XIII B of the California~~
- 3 ~~Constitution.~~

O